
(1989) 07 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No. 1869 and 2563 of 1988 (W.A. No's. 557 and 569/89)

A.P. Padmakumari

APPELLANT

Vs

S.R.O. Employees Co. Op. Society and Another

RESPONDENT

Date of Decision : 17-07-1989

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 176

Citation : (1989) 2 KLJ 170

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : P. Ravindran and V. Rajendran, for the Appellant; M.K. Damodaran and M.R. Rajendran Nair Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.L. Viswanatha Iyer, J.—O.P. No. 1869 of 1988 is by out petitioner and O.P. No. 2563 of 1988 is by 6 petitioners. The facts leading to the Tiling of these two original petitions are the same, the petitioners being persons appointed as Junior Clerks in the first respondent, which is a co-operative society of employees of the Indian Space Research Organisation, Trivandrum. I shall state the facts in O.P. No. 2563/88 inasmuch as the counter affidavit of "he first respondent society is filed therein. The first respondent society invited applications for the post of Junior Clerks as per a notification dated 13-5-1986. The petitioners were qualified for the post and applied for the same. The written test was conducted on 9-8-1986 The second respondent Joint Registrar was in charge of the conduct of the test, a fact which is not denied in the counter affidavit. The question papers were set, examination conducted and the papers valued by the second respondent. The petitioners were called for interview on 29-12-1986. They were selected and were appointed to the post on 19-3-1987.

2. The society is litigation prone and its affairs have led to a good crop of litigation in this court. The reason appears to be the rivalry between political factions to gain control over the management. One Murugan and one Ravi Varma

had filed O.P. No. 4142 of 1986 inter alia to direct the Registrar of Co-operative Societies and his subordinates to command the society to convene a special general body meeting of the society. There was an interim order passed by this court on 8-8-1986 on C.M.P. 18852 of 1986 by which the society was restrained from making further appointments pending the original petition. The original petition was disposed of by the judgment Ext. P1 dated 22-9-86. The parties agreed that the meeting, as prayed for, may be convened. There was difficulty only regarding the details, particularly the place where the meeting should be held. This court therefore, directed the society to convene the meeting after obtaining the requisite sanction from the authorities of the ISRO, as expeditiously as possible. It was further directed that the interim order passed by this Court on 8-8-1986 on C.M.P. 18852 of 1986 will continue to be in force till the special general meeting was convened. In other words, the direction was that there will be a restraint on fresh appointments till the special general meeting was convened. This order was clarified by the order Ext. P2 regarding the place where the meeting is to be convened, but that is not very relevant here.

3. The special general meeting was convened to be held on 8-3-1987, Immediately Murugan reached this Court with a fresh writ petition O.P. No. 1951 of 1987 for a direction to convene a special general body meeting to discuss a motion of no confidence moved by him and others against the members of the managing committee, and for other reliefs. This petition came on for preliminary hearing on 6th March 1987, when the society look notice and was agreeable to have the no confidence motion considered with top priority at the meeting to be held on 8-3-1987. This was recorded. There was a request made on behalf of the petitioner Murugan for direction to the Joint Registrar to be present at the meeting so that the proceedings may be carried on in a proper and orderly manner There was no opposition to this request. Accordingly the writ petition was disposed of recording the undertaking of the society to have the no confidence motion considered at the meeting on 8-3-1987, with a direction that the Joint Registrar or any other officer nominated by him will attend the meeting on 8-3-1987.

4. The special general body meeting had been convened to consider various matters, particularly a proposal to amend the byelaws of the society, to extend the term of the managing committee from three years to five years. The meeting took place on 8-3-1987, with conflicting versions as to what happened on that day. According to the petitioners the meeting took place regularly and properly, the motion of no confidence was defeated and the other items in the agenda were gone through. The general body passed resolution to extend the term of the managing committee to five years. According to the first respondent however, the meeting ended in a fiasco with confusion all around. The meeting was not and could not be, carried on in accordance with law and none of the items was gone through. The Inspector of Co-operative Societies who attended the meeting made a report about the alleged irregularities in the meeting, to the Joint Registrar who, without much ado, passed the order Ext. R1(a) on

22-4-1987 holding that the proceedings at the meeting were not legal and that the resolutions had not been passed after discussion or in accordance with law. In the event, he directed a fresh general body meeting to be convened within three months to discuss the no confidence motion and other items included in the agenda for the meeting on 8-3-1987.

5. This order Ext. R1(a) resulted in the next crop of writ petitions. The Society filed O.P. No. 4132 of 1987 challenging Ext. R1(a). There were two other writ petitions coming in the wake of an attempt by the Joint Registrar to supersede the managing committee and to appoint an Administrator. All these writ petitions were disposed of by Bhat, J. on 6th July 1987 by the judgment Ext. P3. The learned Judge observed that Ext. R1(a) order had been passed by the Joint Registrar on the basis of a report made by the observer deputed by him, but the contents of the report had not been disclosed to the society who had not been afforded any opportunity of showing cause before Ext. R1(a) order was passed. The learned Judge therefore, stated:-

8. I think, there is some substance in the contention advanced on behalf of the, society that the society should have been given an opportunity to have its say - before passing the order impugned in O.P. No. 4132/87. If it to be taken that no confidence motion was not properly moved, the motion is still subsisting. If it is to be considered that the amendments to the bye-laws have not been properly moved or approved, the term of office of the Managing Committee would expire on 30-6-1987. If the term of office so expired, the Managing Committee of the society cannot insist on continuance in office, though the Registrar can extend its period of life. The Joint Registrar has already appointed an Administrator in the place of the Managing Committee.

9. According to the averments in O.P. No. 4132/87 there are two unions of the employees of the I.S.R.O. and they are rivals in the matter of the society affairs and the present administration of the State is favouring the rival group and therefore, has taken a stand against the present Managing Committee. No materials have been placed before court in support of the averments. Therefore the allegation of mala fide cannot stand. However, as I have indicated already, there has been violation of the principles of natural justice.

But the learned Judge did not formally quash Ext R1(a) as it was unnecessary in view of the order ultimately passed by him in the writ petitions. Quashing of Ext. R1(a) will lead to further litigation and the impasse in the affairs of the society will continue. All parties were agreed to have an early election. This court therefore, did not think it necessary to quash Ext. R1(a) at that stage. The Original Petitions were therefore, disposed of with direction to the parties concerned to ensure that the elections were held as expeditiously as possible and at any rate within a period of three months. The Administrator was directed to hand over charge to the erstwhile managing committee, who were permitted to function, attending only to the day to day affairs, of the society without taking any policy decision.

6. The elections were held on 1-10-1987. According to the petitioners, the disputes between the parties have their genesis in the rivalry between two political factions. The erstwhile managing committee was controlled by the AITUC. The rival faction which was the cause of all the troubles was the CITU, which had the backing of the Minister for Co-operation and the government. At the elections held on 1-10-1987, the CITU faction was installed in power. One Ravi Varma who had figured in the previous writ petitions became the Secretary. One of the very first things that the new managing committee did on assuming office was to pass resolutions on 13-10-1987 (Ext P5 series) to terminate the employment of the various petitioners. The petitioners stood stripped of their jobs.

7. Petitioners challenged Ext. P5 series of resolutions by filing representations before the Joint Registrar under Rule 176 of the Kerala Co-operative Societies Rules seeking to rescind the resolutions on various grounds. The Joint Registrar, however made short shift of these petitions on 26-10-1978 rejecting them no sooner than they were filed with an easy abnegation of jurisdiction. The act of self-denial of power and jurisdiction was on the basis that the termination of service attracted the provisions of the Industrial Disputes Act, and the Registrar under the Co-operative Societies Act was not competent to deal with the dispute. The decision of this court in K.V. Service v. Asst. Registrar, 1973 KLT 523 was clutched at for this proposition.

8. Petitioners promptly challenged this order Ext. P7 by filing writ petition O.P. No. 9114 of 1987. This court quashed Ext. P7 accepting the contention of the petitioners that the Registrar did have jurisdiction under rule 176 to deal with the matter. Balakrishna Menon, J. pointed out that rule 176 enabled the Registrar to deal with the matter in question, with the following observations:-

In the present case the relief sought for is only the cancellation of the resolution passed by the committee of the - society. The Registrar's powers in that behalf are conferred by Rule 176 of the Co-operative Societies Rules If the resolution is found to be ultra vires of the objects of the society or is against the provisions of the Act, Rules, bye-laws or of any direction or instruction issued by the Department or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society, the Registrar is conferred the power to cancel the resolution. If any of the conditions enumerated in the rule is satisfied, it is the duty and the obligation of the Registrar to cancel the resolution. It may be true that the Registrar has no jurisdiction to order reinstatement of a dismissed employee of a co-operative society. But that will not fetter him from considering the validity of the resolution in terms of rule 176 of the Rules. The subject-matter of dispute before the 2nd respondent Joint Registrar relates to the validity of the resolution passed by the committee of the society. It is not an industrial dispute, nor does it relate to the enforcement of any right under the Industrial Disputes Act.

The Joint Registrar was therefore directed to deal with the matter afresh after

affording opportunity to both parties to put forward their respective cases.

9. The Joint Registrar then passed the impugned order Ext. P9 on 26-2-1988. He took the view that since this court did not "set aside Ext. R1(a) resolution in the judgment Ext. P3, the decision taken at the meeting of the general body on 8-3-1987 had no validity, as the conduct of the meeting was defective and there was noise and commotion making it impossible to know what had transpired. He also held that the resolutions in question were not liable to be rescinded, inasmuch as they were not ultra vires the objects of the society or against the provisions of the Act or the rules or the bye-laws. He overruled the petitioners' contention that the termination of their services offended rule 184(3) of the Kerala Co-operative Societies Rules. The Joint Registrar was of the view that this rule was attracted only when a probationer's services were terminated on account of unsatisfactory service. Ext P9 is challenged in the original petition.

10. The counter affidavit of the first respondent does not dispute the fact that the written test which led to the selection of the petitioners was conducted by the second respondent. In fact paragraph 3 of the counter affidavit has only this to say about these allegations in paragraph 2 of the original petition:-

The averments contained in paragraph 2 of the original petition may be correct.

Even in paragraph 4 of the counter affidavit it is only stated that the averments in paragraph 2 are not substantially correct. I do not understand these pleadings at all, and what is meant by saying that the averments are not substantially correct. Which of these averments are correct and which are incorrect is not pointed out. In the absence of any specific denial I have to take it that the allegations in paragraph 2 of the original petition about the conduct of the test are correct.

11. The main thrust of the counter affidavit is that the appointments of the petitioners on 19-3-1987 were contrary to the orders passed by this court, meaning thereby the order Ext. P1 and the interim order which was continued thereby, Paragraph 9 of the counter affidavit also refers to the judgment Ext. P3 and the direction to carry on only the day to-day administration. I wonder what Ext. P3 passed on 6-7-1987 has got to do with the appointments made much earlier on 19-3-1987. A perusal of the counter affidavit shows that the main challenge to the appointments is that they had been made in violation of Ext. P1 judgment of this court. Ext. P1 had barred fresh appointments till the holding of the general body meeting and according to the first respondent, this bar endured even after 8-3-1987, when the general body was convened, for the reason that that meeting was not properly held. Paragraph 17 says that the appointments were made illegally and irregularly and were void ab initio. Apparently the reference is to the reason in Ext. P5 series which may be classified under three heads:

a) The appointments were against the order of this court in Ext. P1. This is reflected in ground Nos. 1, 2 and 3.

b) There was no proper general body meeting held on 8-3-1987 and therefore, this court's order continued to be in force even thereafter (Grounds Nos. 4, 8 and 10).

c) There were serious allegations against the managing committee regarding these appointments, that they were made due to extraneous considerations and after receiving huge amounts from the appointees. (Grounds Nos. 5 and 6).

d) There was undue haste in the appointments. This court had held in Ext. P3 judgment that the managing committee should carry on only day-to-day administration. (Ground No. 7)

(As stated earlier. I have been at a loss to understand how the direction in Ext. P3 judgment that the managing committee should carry on only day to day administration has any relevance to the appointments of the petitioners made much earlier, over three months prior to Ext. P3 judgment).

e) There was no proper test and interview conducted by the managing committee.

(The counter affidavit does not however explain how the test and interview were not proper).

12. I must even at this stage observe that the second respondent has not gone into the validity or otherwise of these grounds and has based his order Ext. P9 only on the bar created by Ext. P1 because of the alleged invalidity of the meeting held on 8-3-1987 the absence of jurisdiction under Rule 176 and the non-applicability of Rule 184(3).

13. The Joint Registrar has held in Ext. P9 that the general meeting of 8-3-1987 had no validity, inasmuch as the conduct of the meeting was defective. This point arose for consideration in view of the contention of the first respondent that the appointments had been made in violation of this court's order Ext. P1. However, and apart from stating that the meeting had not been validly held, the second respondent " has not chosen to consider what exactly is the impact or the effect of that finding.

14. The finding in Ext. P9 that there was no proper meeting on 8-3-1987 is based on the order Ext. R1(a) passed by the Joint Registrar. But this court has held in the judgment Ext. P3 that there was substance in the contention advanced on behalf of the society that it should have been given an opportunity to have its say before passing Ext. R1 (a). There was violation of the principles of natural justice in passing Ext. R1(a) (vide paragraphs 8 and 9 of Ext. P3 extracted herein earlier). If so, Ext. R1(a) is null and void and no reliance should have been placed thereon. The matter should have been considered independently afresh by the second respondent. Since the ultimate victims of the finding were the petitioners, the petitioners should also have had an opportunity to have their say in the matter. This would have sub-served the interests of justice, particularly when we note that this court had in the judgment Ext. P3 clearly noted violation of the principles of natural justice in the passing of

Ext. R1(a).

15. In Ext. P1 this court had directed that the bar on appointments will continue till the general meeting was convened. Such a meeting was in fact convened in accordance with law, though there is dispute as to what took place at the meeting. I must state here that - there is no dispute from either of the respondents that the general meeting had not been convened in accordance with law. The very purpose of filing. O.P. No. 4142/86 was for a direction to convene such a meeting. Interim order was sought in view of the apprehension that pending such convening of a meeting, appointments will be made. It was in that context that this court issued the interim order and continued it by Ext. P1.

16. When this court stated in Ext P3 that the validity of the decisions taken at the meeting could not have been decided without notice to the society, the second respondent should have applied his mind afresh to the question, and decided thereon, instead of repeating and following what was contained in Ext. R1(a). This is all the more so, because such consideration would have afforded opportunity to the petitioners as well to put forward their case, instead of being met with a *fait accompli* based on Ext. R1(a).

17. The case of the first respondent regarding the appointments is primarily based on the continued operation of the order Ext. P1 and the appointments being in violation therefore. Necessarily and if there was a proper meeting on 8-3-1987 the appointments cannot be called in question on this score.

18. If the appointments were otherwise regular and valid and not hit by Ext. P1, the position will be that the petitioners acquire rights under rule 184. The petitioners case is that they were appointed to substantive vacancies. The contention that the test and the interview were not held properly has not been attempted to be substantiated before me. The pleadings regarding this are vague, as pointed out by me in paragraph 8 *supra*. If the appointments were regular, the petitioners became probationers in service and their appointments could be terminated only in accordance with rule 184(3). If the appointments were not void *ab initio* as contended by the respondents, the petitioners do acquire right to continue in. office. They can be discharged only after following the procedure prescribed by rule 184(3). Admittedly that has not been done. The second respondent's approach that rule 184 (3) applies only if there is discharge of a probationer for unsatisfactory service does not appear to be justified and takes away the protection which employees of Co-operative Societies are conferred by Rule 184. If the second respondent's view be correct, the position will be that a probationer can be sent out" without following any procedure by merely stating that his services are being terminated. The question of getting sanction from the Registrar will arise only if it is stated that he is being sent out for unsatisfactory service. Such an unreasonable result cannot be postulated. The second respondent ought not to have read the rule in this limited narrow way and thereby refuse to exercise the powers under rule 176.

19. Even otherwise the termination of services of a regular employee (albeit a probationer) without reason is not for the welfare or in the interests of the society. The society has taken pains to hold the test and interview. All that will go waste, apart from the fact that the society's credibility as well as its finances will stand affected by such exercises. Even such talent who may be prepared to take up jobs in Co-operative Societies will feel jeopardised if they have no security of service. Rule 176 should therefore, be available to check wanton discharge or termination of service of the employees.

20. There has therefore, been an abnegation of jurisdiction by the second respondent on a wrong view of the scope of rules 176 and 184(3)99 also of the scope and effect of Ext. R1(a). I am afraid the petitioners have been made pawns in the political gambit between the two factions contesting for power in the society. Ext. P9 is therefore, to be quashed and the matter has to be considered afresh in the light of the observations contained in Ext. P8 as well as in this judgment.

21. The facts in O.P. No. 1869 of 1988 are similar and that has also to be allowed. The Original Petitions are therefore, allowed. Ext. P9 order in O.P. No. 2563 of 1988 (which is Ext. P10 in O.P. No. 1869 of 1988) is quashed. The second respondent shall pass fresh orders in the matter within a period of three months from the date of receipt of a copy of this judgment, with opportunity to all the petitioners to be heard.

The original petitions are allowed. No costs.